

IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

BRUCE L. WILLIAMS, :  
 :  
 Plaintiff, :  
 :  
 vs. : CIVIL ACTION 05-00700-CG-B  
 :  
 DOTCH'S BARBER SHOP & SALON, :  
 :  
 Defendant. :

REPORT AND RECOMMENDATION

Plaintiff, proceeding *pro se*, filed a handwritten complaint alleging that Defendant caused him personal injury (Doc. 1).<sup>1</sup> Plaintiff also filed a handwritten motion to proceed *in forma pauperis* (Doc. 2). This action was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.2(c)(4) for appropriate action, and is now before the Court due to Plaintiff's failure to prosecute and to comply with the Court's Order.

Plaintiff's handwritten complaint (Doc. 1) failed to state the basis on which Plaintiff sought to invoke this Court's subject matter jurisdiction. The complaint also lacked a plain statement of Plaintiff's claims sufficient to show that he is entitled to relief, and to give Defendant notice of the claims

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<sup>1</sup>Plaintiff alleges that Defendant intentionally provided him with an unstylish haircut that caused Plaintiff scalp soreness and public ridicule.

against it. Thus, on March 2, 2006, Plaintiff was ordered to file an amended complaint by March 20, 2006, clearly setting forth the basis for this Court's subject matter jurisdiction, and providing a short and plain statement of his claims and the relief sought.

Plaintiff's motion to proceed *in forma pauperis* was also found to be deficient, in that it did not contain enough information for the Court to determine Plaintiff's ability to pay the Court's filing fee. Plaintiff was granted leave to file a new motion to proceed without prepayment of fees (Doc. 3). In addition, Plaintiff was cautioned his failure to provide the additional information required by the Court to make a determination as to his ability to pay by March 20, 2006, would result in the denial of his motion to proceed without prepayment of costs, and require him to pay the \$250.00 filing fee. Plaintiff has not responded in any manner to the Court's Order (Doc. 3), nor has Plaintiff's copy of the Order been returned to the Court.

Due to Plaintiff's failure to comply with the Court's Order and to prosecute this action, and upon consideration of the alternatives that are available to the Court, it is recommended that this action be dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure as no other lesser sanction will suffice. Link v. Wabash R. R., 370 U.S. 626, 630,

82 S.Ct. 1386, 8 L.Ed.2d 734 (1962) (interpreting Rule 41(b) not to restrict the court's inherent authority to dismiss sua sponte an action for lack of prosecution); World Thrust Films, Inc. v. International Family Entertainment, Inc., 41 F.3d 1454, 1456-57 (11th Cir. 1995); Mingo v. Sugar Cane Growers Co-op, 864 F.2d 101, 102 (11th Cir. 1989); Goforth v. Owens, 766 F.2d 1533, 1535 (11th Cir. 1985); Jones v. Graham, 709 F.2d 1457, 1458 (11th Cir. 1983). Accord Chambers v. NASCO, Inc., 501 U.S. 32, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991) (ruling that federal courts' inherent power to manage their own proceedings authorized the imposition of attorney's fees and related expenses as a sanction); Malautea v. Suzuki Motor Co., 987 F.2d 1536, 1545-46 (11th Cir.) (finding that the court's inherent power to manage actions before it permitted the imposition of fines), cert. denied, 510 U.S. 863, 114 S.Ct. 181, 126 L.Ed.2d 140 (1993).

The attached sheet contains important information regarding objections to this Report and Recommendation.

DONE this **10th** day of **April 2006**.

/s/ SONJA F. BIVINS  
UNITED STATES MAGISTRATE JUDGE

**MAGISTRATE JUDGE'S EXPLANATION OF PROCEDURAL RIGHTS  
AND RESPONSIBILITIES FOLLOWING RECOMMENDATION  
AND FINDINGS CONCERNING NEED FOR TRANSCRIPT**

1. **Objection.** Any party who objects to this recommendation or anything in it must, within ten days of the date of service of this document, file specific written objections with the clerk of court. Failure to do so will bar a *de novo* determination by the district judge of anything in the recommendation and will bar an attack, on appeal, of the factual findings of the magistrate judge. See 28 U.S.C. § 636(b)(1)(c); Lewis v. Smith, 855 F.2d 736, 738 (11th Cir. 1988). The procedure for challenging the findings and recommendations of the magistrate judge is set out in more detail in SD ALA LR 72.4 (June 1, 1997), which provides, in part, that:

A party may object to a recommendation entered by a magistrate judge in a dispositive matter, that is, a matter excepted by 28 U.S.C. § 636(b)(1)(A), by filing a "Statement of Objection to Magistrate Judge's Recommendation" within ten days after being served with a copy of the recommendation, unless a different time is established by order. The statement of objection shall specify those portions of the recommendation to which objection is made and the basis for the objection. The objecting party shall submit to the district judge, at the time of filing the objection, a brief setting forth the party's arguments that the magistrate judge's recommendation should be reviewed *de novo* and a different disposition made. It is insufficient to submit only a copy of the original brief submitted to the magistrate judge, although a copy of the original brief may be submitted or referred to and incorporated into the brief in support of the objection. Failure to submit a brief in support of the objection may be deemed an abandonment of the objection.

A magistrate judge's recommendation cannot be appealed to a Court of Appeals; only the district judge's order or judgment can be appealed.

2. **Opposing party's response to the objection.** Any opposing party may submit a brief opposing the objection within ten (10)

days of being served with a copy of the statement of objection.  
Fed. R. Civ. P. 72; SD ALA LR 72.4(b).

3. **Transcript (applicable where proceedings tape recorded).**

Pursuant to 28 U.S.C. § 1915 and Fed.R.Civ.P. 72(b), the magistrate judge finds that the tapes and original records in this action are adequate for purposes of review. Any party planning to object to this recommendation, but unable to pay the fee for a transcript, is advised that a judicial determination that transcription is necessary is required before the United States will pay the cost of the transcript.

**DONE** this the 10<sup>th</sup> day of **April, 2006.**

**/s/ Sonja F. Bivins**

**UNITED STATES MAGISTRATE JUDGE**